

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GENENTECH, INC.,	)	Case No.: 10-CV-02037-LHK
	)	
Plaintiff,	)	
	)	
v.	)	TENTATIVE ORDER REGARDING
	)	LEAVE TO AMEND AND SETTING
THE TRUSTEES OF THE UNIVERSITY OF	)	CASE MANAGEMENT CONFERENCE
PENNSYLVANIA, a Pennsylvania non-profit	)	
corporation,	)	
	)	
Defendant.	)	

---

Plaintiff Genentech, Inc. (Genentech) has moved to amend its complaint and answer to assert a claim for declaratory judgment of unenforceability and an additional affirmative defense (“Motion,” Dkt. No. 163). Genentech’s amendments assert that defendant Trustees of the University of Pennsylvania (U Penn) committed inequitable conduct while prosecuting U.S. Patent No. 6,733,752 (the ’752 Patent). U Penn opposed the motion, and Genentech filed a reply brief. U Penn moved for leave to file a sur-reply to Genentech’s reply on May 6, 2011. Genentech opposed U Penn’s request for leave, and in the alternative asked for leave to file a sur-sur-reply on May 9, 2011.

The parties are ordered not to file any additional briefing relating to the Motion. The Court has reviewed the papers submitted and tentatively finds that Genentech should be given leave to amend regarding the first asserted basis of inequitable conduct (alleged misrepresentation of the number of mice who survived 90 weeks of “high dose” treatment with no tumors). Accordingly,

the Court asks that the parties focus their arguments at the May 12, 2011 hearing on the other asserted bases of Genentech's request for leave to amend.

In light of the May 9, 2011 filing of the Order Construing Disputed Claim Terms of the '752 Patent, the Court believes the case schedule is set pursuant to the December 8, 2010 Case Management Order, as follows:

Event	Date
Production of Discovery relating to advice of counsel (PLR 3-7)	June 28, 2011
Fact Discovery Cutoff	Sept. 6, 2011
Opening Expert Reports by Party with Burden	Sept. 27, 2011
Rebuttal Expert reports	Oct. 18, 2011
Close of Expert Discovery	Nov. 7, 2011
Opening briefs on Dispositive Motions	Nov. 21, 2011
Oppositions to Dispositive Motions	Dec. 12, 2011
Replies on Dispositive Motions	Dec. 23, 2011
Hearing on Dispositive Motions	Formerly Jan. 6, 2012; hereby reset for <b>Jan. 12, 2011 at 1:30 p.m.</b>
Pretrial conference	March 28, 2012 at 2 p.m.
Trial (5-10 days)	Formerly April 5, 2011; <b>hereby reset for April 16, 2012 at 9 a.m.</b>

In lieu of the pretrial deadlines set in the December 8, 2010 Case Management Order, the parties shall comply with the Court's Standing Order regarding civil jury trials for all pretrial deadlines. The Court hereby sets a Case Management Conference to follow the May 12, 2011 hearing on the Motion. No Joint Case Management Statement is required. However, if the parties wish to raise particular case management issues, they may file a Joint Case Management Statement limited to those issues by Wednesday, May 11, 2011 at 5 p.m.

**IT IS SO ORDERED.**

Dated: May 10, 2011

  
 LUCY H. KOH  
 United States District Judge